

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
May 27, 2008

**D052619      In re Jonathan W., a Juvenile**

The appeal is dismissed. Benke, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

**D052551      In re Jonathan G. et al., Juveniles**

The appeal is dismissed. Huffman, J.; We Concur: Benke, Acting P.J., Nares, J.

**D052170      In re Benson on Habeas Corpus**

Respondent is ordered to show cause why the relief requested should not be granted on the sole question of whether respondent's regulations distinguishing between the types of hair care products that can be purchased by male and female inmates are valid under the state constitution. (Inmates of Sybil Brand Institute for Women v. County of Los Angeles (1982) 130 Cal.App.3d 89, 99; Molar v. Gates (1979) 98 Cal.App.3d 1, 13.) The order to show cause is made returnable before the Superior Court of Imperial County. The court clerk is directed to provide the superior court with a copy of all the documents on file in this case. A supplemental petition, return, and traverse may be filed in the superior court subject to filing deadlines established by the superior court. The superior court is directed to appoint counsel to represent petitioner and to hear and determine the above question as the justice of the case may require. (Pen. Code, 1508, subd. (b); People v. Romero (1994) 8 Cal.4th 728, 740.) This includes, if appropriate, taking evidence on the issue of whether the distinctions in respondent's regulations serve a compelling interest that cannot be satisfied by less intrusive means.

**D051758      People v. Gomez**

The judgment is affirmed. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

**D052853      David L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner David L. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D052797      Christie L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Christie L. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D052934      Laura M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Laura M. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE

May 27, 2008 (Continued)

**D052940 Ramon B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Ramon B. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D051142 Stellmacher v. Dillon**

The order is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

**D051214 People v. Arias**

The judgment is modified by staying the sentences on counts 11, 13, and 15 and reducing the court security fees from \$720 to \$320. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections and Rehabilitation. Aaron, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

**D050679 In re Thompkins on Habeas Corpus**

The petition is denied. McDonald, Acting P.J.; I Concur: McIntyre, J., O'Rourke, J., Concurring Opinion

**D050196 Hawkes v. Sommer**

The appeal is dismissed as to the orders denying Sommer's request that the trial judge recuse from the case and striking his challenge for cause, the order denying his motion for reconsideration, its failure to rule on his motion to vacate the judgment and the order granting a preliminary injunction. The judgment and the order awarding attorney fees to the Trust are affirmed in their entirety. The motion for sanctions is denied. The Trust is awarded its costs and \$16,320 in reasonable attorney fees incurred on appeal. McIntyre, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D052266 In re Jonathan G., a Juvenile**

The order is affirmed. McConnell, P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D052651 In re Cunningham on Habeas Corpus**

The petition is denied.

**D050426 People v. Munoz**

The convictions and judgment are affirmed, as modified, to strike certain firearm enhancements and the prison priors (§§ 667.5, subd. (b); 12022.5, subd. (a); 12022.3, subd. (a)), with directions to the trial court to prepare an amended abstract of judgment and submit it to the Department of Corrections and Rehabilitation; in all other respects, the judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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May 27, 2008 (Continued)

**D052579      In re Finney on Habeas Corpus**

The petition is denied.

**D050952      In re Salvador D.C., a Juvenile**

The maximum term of confinement is stricken from the May 2 judgment. As so modified, the judgment is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., Irion, J.

**D050851      In re Duran on Habeas Corpus**

The petition for rehearing is denied. Justices Huffman and Haller concur in the denial; Justice McDonald would grant.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
May 28, 2008

**D048497      People v. New**

The judgment of the trial court is affirmed. CERTIFIED FOR PUBLICATION  
Aaron, J.; We Concur: Nares, Acting P.J., Haller, J.

**D051949      People v. Coleman**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is  
DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

**D052836      Jay N. v. Superior Court of San Diego County/San Diego County Health and  
Human Services Agency.**

The attorney for petitioner Jay N. has notified the court that a petition for writ of mandate under  
California Rules of Court, Rule 8.452 and 5.600 will not be filed as there are no viable issues for  
writ review. The case is dismissed.

**D052923      Kirk v. Superior Court of San Diego County/Stockton et al.**

For good cause shown, on or before June 6, 2008, superior court is ordered to grant the relief  
requested by transferring the quiet title action, *Stockton v. Residential Capital, L.P. et al.*, case  
No. GIN040676, to Judge Robert P. Dahlquist for all further proceedings including trial on the  
cross-complaint.

In the alternative, should superior court fail to order the transfer, the court is ordered to show  
cause why the action should not be transferred. In that case, absent objection on or before June  
13, 2008, the briefs on file will be deemed the return and reply to the order to show cause. Oral  
argument will be deemed waived unless requested on or before June 20, 2008. If a party  
requests oral argument, the request should be in letter form with proof of service on the other  
parties. The letter should also identify the focus of the party's argument and the amount of time  
requested, not to exceed 15 minutes.

Petitioner is directed to advise this court of the superior court's response to this order on or  
before June 10, 2008.

**D048930      People v. Alsayad**

The petition for rehearing is denied.

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**D052660      In re Wright on Habeas Corpus**

The petition is denied.

**D051506      People v. Hall, Jr.**

The judgment is affirmed. Aaron, J.; We Concur: Nares, Acting P.J., Haller, J.

**D050662      People v. Villegas**

The order of restitution to Woods in the amount of \$297.67 is reversed. In all other respects, the judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Aaron, J.

**D052845      In re Graham on Habeas Corpus**

Respondent is ordered to show cause why the relief requested should not be granted. The order to show cause is made returnable before the Superior Court of San Diego County. The court clerk is directed to provide the superior court with a copy of all the documents on file in this case. A supplemental petition, return, and traverse may be filed in the superior court subject to filing deadlines established by the superior court. The superior court is directed to appoint counsel to represent petitioner and to hear and determine the above question as the justice of the case may require. (Pen. Code, § 1508, subd. (b); *People v. Romero* (1994) 8 Cal.4th 728, 740.) The superior court is directed to inform this court of its decision on the merits within 120 days of the date of this order.

**D051413      In re Erica E. et al., Juveniles**

**D051716      In re Erica E. et al., Juveniles**

(Consolidated) The orders are affirmed. Haller, J.; We Concur: Nares, Acting P.J., Irion, J.

**D052738      In re O'Hines on Habeas Corpus**

The petition is denied.

**D053056      In re Keeler on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
May 29, 2008 (Continued)

**D051944      In re Richie on Habeas Corpus**

The petition for a writ of habeas corpus and informal response have been read and considered by Presiding Justice McConnell and Associate Justices Benke and Aaron. We take judicial notice of the appeal D033737.

A jury convicted Robert Richie of second degree burglary. The court found true the allegations that Richie had served three prior prison terms and had suffered two prior strike convictions. On June 24, 1999, the court struck the three prison prior enhancements and sentenced Richie to prison for 25 years to life. We affirmed the judgment on January 7, 2002.

Richie contends his sentence is illegal because the court used a juvenile adjudication as a strike conviction "to increase the sentence above the statutory maximum ." citing *Apprendi v. New Jersey* (2000) 530 U.S. 466 and *People v. Nguyen* (2007) 152 Cal.App.4th 1205 [62 Cal.Rptr.3d 255], review granted October 10, 2007, S0154847 (*Nguyen*). He argues his juvenile adjudication for rape should not qualify as a strike because he did not have a jury trial.

The California Supreme Court granted review in *Nguyen* on October 10, 2007, S0154847. We deny the petition without prejudice to any relief to which Richie might be entitled after the California Supreme Court decides *Nguyen*. We do not address Richie's arguments as to the superior court order denying his petition in that court. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.)

The petition is denied without prejudice.

**D052704      In re Abdullah-Clarke**

The petition is denied.

**D051826      People v. Graham**

The request for publication is denied.

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**D051952      People v. Tran**

The judgment is affirmed. Irion, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

**D051340      People v. Delozier**

The judgment is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D051749      People v. Glenn**

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., Irion, J.

**D052203      In re Gabriel L., a Juvenile**

The order is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

**D052623      In re Young on Habeas Corpus**

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Haller and McIntyre.

Petitioner is a prisoner incarcerated at Centinela State Prison. Petitioner indicates he is serving four consecutive life sentences for murder and attempted murder counts. Petitioner contends his due process rights were violated when he was placed in administrative segregation and subsequently transferred to another institution based on a confidential information disclosure form (CDC 1030) that was based on statements by Staff Sergeant Richards that were not true. Petitioner received notice, a hearing and an opportunity to present evidence in his defense, a written statement by the fact finder of the evidence relied on and the reasons for administrative segregation and transfer, and full administrative appeal. Petitioner has therefore been afforded all the process due to him. (*Wolff v. McDonnell* (1974) 418 U.S. 539, 563-567.) Additionally, we only need to find "some evidence" to support the administrative decision. (*Superintendent v. Hill* (1985) 472 U.S. 445, 455-456; *In re Zepeda* (2006) 141 Cal.App.4th 1493, 1498.) This standard "does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." (*Superintendent v. Hill, supra*, 472 U.S. at pp. 455-456.) As explained in petitioner's administrative appeal, a CDC 114-D indicated petitioner was identified as a gang member who was actively promoting violence. Additionally, the CDC 1030 indicated a reliable source informed staff that petitioner was attempting to "claim territory" in the yard, which caused friction between African-American and Hispanic inmates. Petitioner's administrative appeal also indicates the CDC 1030 was corroborated by two sources and petitioner admitted he was a "shot caller" of the Crips prison gang. Because this constitutes "some evidence" to support the decision to place petitioner in administrative segregation and transfer him, we deny the petition. (*Id.* at pp. 455-456; *In re Zepeda, supra*, 141 Cal.App.4th at p. 1498; *In re Lusero* (1992) 4 Cal.App.4th 572, 575 [applying "some evidence" standard to administrative decision assigning prisoner to a security housing unit].) Finally, we note that petitioner has no constitutional right against transfer from one institution to another within the state prison system. (*Meachum v. Fano* (1976) 427 U.S. 215, 224-225; *Olim v. Wakinekona* (1983) 461 U.S. 238, 245-246.)

The petition fails to state sufficient facts to establish a prima facie case for relief. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474-475.)

The petition is denied.

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**D049940      Hytken v. Hytken**

The appeal is dismissed. Irion, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

**D051398      People v. Penales**

Judgment affirmed. Benke, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

**D052168      In re D.E., a Juvenile**

The order is affirmed. Irion, J.; We Concur: McDonald, Acting P.J., Aaron, J.

**D051970      People v. Reyes**

The judgment is affirmed. Irion, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D049921      People v. Mito**

Order modifying opinion [no change in judgment].

**D052647      In re Norman on Habeas Corpus**

The petition is denied.

**D047009      Marcisz et al. v. Movie Theater Entertainment Group, Inc.**

That portion of the new trial order granting a new trial on the amount of compensatory damages is reversed and the original compensatory damage awards are reinstated. That portion of the new trial order granting a new trial on punitive damages is affirmed and the matter is remanded for a new trial on punitive damages. Plaintiffs are entitled to their costs on appeal. McIntyre, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D053098      City of Coronado et al. v. Superior Court of San Diego County/Foley**

The petition is denied.

**D052399      In re Maranda H., a Juvenile**

The order is affirmed. Nares, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

**D051037      People v. Taylor**

Affirmed in part, reversed in part and remanded for further proceedings on Taylor's suppression motion. Irion, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

**D051403      People v. Bankhead**

The judgment is affirmed. Irion, J.; We Concur: Haller, Acting P.J., Aaron, J.

**D050452      Juneau v. County of San Diego, Department of Animal Services**

The judgment is affirmed. Each party is to bear its own costs on appeal. Huffman, Acting P.J.; We Concur: Nares, J., Irion, J.



COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D052847      Bauer v. Superior Court of San Diego County/Scott et al.**

The petition is denied.

**D052741      In re Armstead on Habeas Corpus**

The petition is denied.

**D053062      Schneider v. The Superior Court of San Diego County/Bisby et al.**

The petition is denied.

**D052746      In re Desantiago on Habeas Corpus**

The petition is denied.

**D052658      In re Brown on Habeas Corpus**

The petition is denied.

**D052783      In re Brown on Habeas Corpus**

The petition is denied.

**D052825      Gabriel Z. v Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Gabriel Z. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

**D053009      Marcela N. et al v Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Marcela N. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Marcela N. is DISMISSED.